

October 3, 2014

William D. McMinn  
Deputy General Counsel  
3165 Pacific Highway  
P O Box 120488  
San Diego CA 92112-0488

Re: Your Request for Advice  
**Our File No. A-14-161**

Dear Mr. McMinn:

This letter responds to your request for advice, made on behalf of Randa Coniglio, Executive Vice President, Operations of the San Diego Unified Port District (“District”), regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090.<sup>1</sup> Please note that we do not provide advice on any other conflict of interest restrictions outside the Act or Section 1090, such as common law conflict of interest. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), meaning that any advice we provide assumes the facts the requester provides to us are complete and accurate. If this is not the case, then our advice could be different.

In regards to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General’s Office and the San Diego County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

## QUESTION

Under the Act or Section 1090, is Ms. Coniglio prohibited from participating in District decisions that have a financial effect on or involve a contract with Dudek, Inc.?

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## CONCLUSION

Since Ms. Coniglio has no financial interest in Dudek, Inc., she is not prohibited under the Act or Section 1090 from participating in District decisions that have a financial effect on or involve a contract with Dudek, Inc.

## FACTS

You are Deputy General Counsel representing the District and the authorized Representative, in this matter, of Randa Coniglio, Executive Vice President, Operations. This request for advice concerns the operation of the District, a public agency and tideland trustee organized and existing pursuant to the San Diego Unified Port District Act ("Port District Act"), which has been codified in the California Harbors and Navigation Code, Appendix 1. The District is governed by a Board of Port Commissioners and has jurisdiction over tidelands surrounding the San Diego Bay, submerged lands in the Bay, and any other lands acquired by the District, which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation, as codified in the Port District Act.

Ms. Coniglio has full financial disclosure on her Statement of Economic Interests (Form 700) pursuant to the District's conflict of interest code, but is not a member of the Board of Port Commissioners that oversees the District.

Dudek, Inc. ("Dudek") is a private environmental consulting firm headquartered in the City of Encinitas that provides services from time to time to the District. Dudek has done extensive work on the District's Chula Vista Bayfront Master Plan and a North Embarcadero Environmental Impact Report. It is presumed that the District will contract with Dudek in the future for additional services.

Ms. Coniglio's daughter is an employee of Dudek, having originally applied for the position of and being hired as an intern at that company. Ms. Coniglio made no contact with Dudek regarding her daughter's job application (or regarding anything else during the time her daughter was seeking employment from Dudek). Ms. Coniglio's daughter was hired on about March 25, 2013 and was offered a permanent position mid-May 2013. Her title is Environmental Analyst and her job duties have nothing to do with seeking or securing business, projects, or consulting agreements. Ms. Coniglio's daughter is not a dependent of Ms. Coniglio and Ms. Coniglio has no financial relationship with her daughter. Also, Ms. Coniglio has no separate interest in Dudek.

## ANALYSIS

The Act, in Section 87100, and Section 1090 both generally prohibit public officials such as Ms. Coniglio from participating in government decisions in which they have a financial interest. Subject to certain exceptions, the Act applies to all government decisions and Section 1090 applies to government decisions relating to the making of contracts.

Central to your question is the issue of whether, by virtue of her daughter's employment with Dudek, Ms. Coniglio herself has an interest in Dudek. If she does not, neither Section 87100 nor Section 1090 would prohibit her from making or participating in future District decisions that have a financial effect on or involve a contract with Dudek. Below, we analyze whether, under the facts presented, Ms. Coniglio has an interest in Dudek under either of these provisions.

#### Potentially Disqualifying Interests under the Act

Section 87103 and Regulations 18703 through 18703.5 set forth the types of interests held by a public official that, when affected by a government decision, may expose the official to a possible conflict of interest under Section 87100 in the Act. Of these interests, the ones most pertinent to your question are as follows:

- An interest in any source of income, including promised income, aggregating \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.) Section 82030 defines the term "income" to include an official's community property interest in the income of his or her spouse, but does not extend the definition to include the income of a child unless it is a dependent child and the income is through a business entity in which the child owns a ten-percent or more interest worth \$2,000 or more. (See Section 82030(a).)
- An interest in the official's personal finances, including those of his or her immediate family -- this is the "personal financial effects" rule. (Section 87103; Regulation 18703.5.) Under Regulation 18705.5(a), when the government decision will have an effect of \$250 or more on the personal expenses, income, assets or liabilities of the official or his or her immediate family in a 12-month period, there is a "personal financial effect" for purposes of this rule. Section 82029 defines the term "immediate family" as "the spouse and dependent children."

Thus, a source of income to a public official's child will only create a conflict of interest issue for the official under the Act in two instances: (1) When the child is a dependent of the official and receives income through a business entity in which the child has a specified ownership interest; and (2) When the child is a dependent of the official and the government decision will have a specified "personal financial effect" on the child. However, as is evident, these rules only apply when the child is a dependent of the official. You indicate that Ms. Coniglio's daughter is not her dependent and that Ms. Coniglio has no financial relationship with her daughter. Accordingly, Ms. Coniglio has no interest in her daughter under the Act as a result of her daughter's income from Dudek and, therefore, would have no conflict of interest on those grounds under Section 87100 if she participated in District decisions affecting Dudek.

### Financial Interests under Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson, supra*, at pp. 645, 651-652; *see also People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; *People v. Darby* (1952) 114 Cal.App.2d 412, 431-432; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Thus, if Ms. Coniglio were to have a conflict of interest issue under Section 1090 concerning Dudek, the District would have to be making a contract either with or concerning Dudek and she would have to be “financially interested” in Dudek.

In 92 Ops.Cal.Atty.Gen. 19 (2009), the Attorney General analyzed whether a redevelopment agency board member had a conflict of interest if the agency entered into a loan agreement with the board member’s adult son who resided with the board member but was not her dependent. In the portion of the opinion analyzing Section 1090, it was noted that, under Section 1091(b)(4), an official has a “remote interest” in the earnings of his or her minor child,<sup>2</sup> but the Section 1090 statutory scheme makes no reference to interests in an adult child. Further, the opinion stated that there was no evidence the board member would profit from the loan transaction. Consequently, the opinion concluded that the board member had no financial interest in the contract and thus had no conflict of interest under Section 1090, stating: “A parent is not legally compelled to support an adult child absent special circumstances not present here, such as the child’s incapacity. Conversely, an adult child has no legal duty to support a parent, unless the parent is “in need and unable to support himself or herself by work,” a circumstance also not present here. [Footnotes omitted.]<sup>3</sup>”

We agree with this opinion and think its rationale applies to Ms. Coniglio’s circumstances. Under the facts considered in the opinion, the official’s son was an adult, not a dependent of the official, and, even though he lived with the official, had no apparent financial relationship with the official. Your facts do not provide information on whether or not Ms. Coniglio’s daughter resides with Ms. Coniglio. However, that fact is irrelevant because, like the facts in the Attorney General’s opinion, her daughter is not a dependent and there is no financial relationship between her and the daughter. Consequently, based on these facts, we conclude that Ms. Coniglio has no financial interest in her daughter for purposes of Section 1090

---

<sup>2</sup> Meaning that, in the case of a minor child, the board itself could vote on the loan agreement so long as the board member in question did not participate in the decision and followed other specified procedures. (See Section 1091(a).)

<sup>3</sup> The phrase “in need and unable to support himself or herself by work” is quoted from Family Code Section 4400.

and is thus not prohibited under Section 1090 from participating in District contracting decisions with her daughter's employer, Dudek.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Scott Hallabrin  
Counsel, Legal Division

SH:jgl